

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTIAN ALEJANDRO CARRILLO,

Defendant and Appellant.

C079728

(Super. Ct. No. CRF15849)

Defendant Christian Alejandro Carrillo entered a negotiated plea encompassing case Nos. 15-0849 and 14-1658. The trial court sentenced him to serve an aggregate term of four years in state prison and awarded him 320 days of presentence custody credit. After granting defendant's Proposition 47 petition in a previous case (case No. 13-3427), the trial court resentenced him in all three cases to serve an aggregate term of three years four months and ordered custody credits to remain the same.

On appeal, defendant claims the trial court failed to recalculate his presentence custody credits at the time of resentencing. We shall dismiss the

appeal because defendant did not seek a correction of the credit calculation in the trial court.

PROCEDURAL HISTORY

The facts of defendant's underlying crimes are not relevant to this appeal.

On June 4, 2015, defendant entered a negotiated plea of no contest in case No. 15-0849 in exchange for a stipulated sentence of one year four months in state prison, to be served consecutive to his previously imposed sentence in case No. 14-1658, for an aggregate sentence of four years in state prison. The trial court sentenced him accordingly. The June 2015 abstract of judgment reflects 320 days of presentence custody credit (160 actual days plus 160 days of conduct credit).

On July 13, 2015, the trial court granted defendant's Proposition 47 petition in case No. 13-3427 and resentenced him in that case, reducing the previously imposed eight-month state prison sentence to 120 days in county jail, to be served concurrent to his sentence in case Nos. 14-1658 and 15-0849, for an aggregate sentence of three years four months. The court stated, "Credits remain the same." The abstract of judgment filed July 16, 2015, reflects 320 days of presentence custody credit (160 actual days plus 160 days of conduct credit).

DISCUSSION

The sole issue raised by defendant on appeal is whether the trial court failed to recalculate his custody credits at the time of resentencing. The People argue the claim is not cognizable on appeal pursuant to section 1237.1 and *People v. Delgado* (2012) 210 Cal.App.4th 761 (*Delgado*) because defendant did not seek correction of the credit calculation in the trial court. Defendant responds that those authorities only apply "to errors in the 'calculation' of credits, i.e., 'a mere alleged mathematical or clerical error.' "

Section 1237.1 provides in relevant part that “[n]o appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court, which may be made informally in writing.”

Defendant has not presented his claim to the trial court as required by section 1237.1. He claims the holding in *Delgado, supra*, 210 Cal.App.4th 761 relieved him of that duty. He is wrong. In *Delgado*, the trial court calculated defendant’s presentence custody credits after finding he was “not eligible for half-time credits pursuant to section 2933, former subdivision (e)(3).” (*Delgado, supra*, 210 Cal.App.4th at p. 763.) The defendant appealed, claiming the equal protection clauses of the federal and state Constitutions entitled him to additional custody credits under amended section 4019. The People argued the appeal should be dismissed under section 1237.1. (*Id.* at pp. 763-764.) Both arguments were rejected. As relevant here, the appellate court conducted an in-depth analysis of the statutory construction of section 1237.1 and the intended meaning of the phrase “an error in the calculation of presentence custody credits” and concluded section 1237.1 “does not preclude a defendant from raising, as the sole issue on an appeal, a claim his or her presentence custody credits were calculated pursuant to the wrong version of the applicable statute.” (*Delgado, supra*, 210 Cal.App.4th at pp. 763, 767.) In so concluding, however, the court distinguished the defendant’s claim from those properly dismissed pursuant to section 1237.1, noting that “an error in ‘doing the math’ or, as in [*People v. Fares* (1993) 16 Cal.App.4th 954], an apparent oversight in an award of credits, constitutes the type of minor sentencing error at which section 1237.1 was clearly aimed.” (*Delgado, supra*, at p. 766.)

Here, the trial court resentenced defendant and, with respect to custody credits, noted only that “[c]redits remain the same.” Neither party objected, nor did defendant question the court’s statement or request recalculation of custody credits, either at the time of resentencing or thereafter. Defendant’s claim seeks to correct the type of apparent oversight or inadvertent error to which section 1237.1 applies. Because defendant did not inform the trial court of its apparent oversight and request correction pursuant to section 1237.1, his appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

_____/s/
HOCH, J.

We concur:

_____/s/
HULL, Acting P. J.

_____/s/
ROBIE, J.